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5 **UNITED STATES DISTRICT COURT**  
6 **DISTRICT OF NEVADA**

7 WILLIAM J. CUNDITT,

8 *Plaintiff,*

9 vs.

10 HIGH DESERT STATE PRISON, *et al.*

11 *Defendants.*  
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3:11-cv-00397-ECR-RAM

ORDER

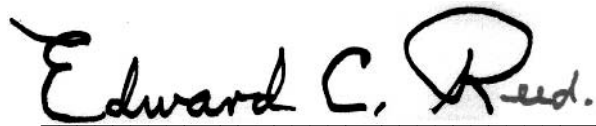
14 This prisoner action comes before the Court following upon plaintiff's filing of a notice  
15 of appeal (#5). Pursuant to 28 U.S.C. § 1915(a)(3), the Court certifies to the Court of Appeals  
16 that the appeal is not taken in good faith.

17 The Court dismissed the action without prejudice to the filing of a new, properly  
18 commenced action. Plaintiff failed to properly commence the action because he neither paid  
19 the filing fee nor submitted an application to proceed *in forma pauperis*. Before dismissing  
20 the action without prejudice, the Court first reviewed the factual allegations and determined  
21 that a promptly filed new civil rights action would not be time-barred. The Court further, out  
22 of an abundance of caution, directed the Clerk to open a separate and new habeas action  
23 because some of the papers submitted with the prisoner civil rights complaint perhaps could  
24 be construed as an attempt to also file a habeas petition. Plaintiff thus is in no manner or  
25 sense prejudiced by a dismissal of the present improperly-commenced civil rights action  
26 without prejudice to the filing of a new properly-commenced civil rights action. The appeal  
27 from the dismissal accordingly is frivolous such that an appeal would be dismissed in the case  
28 of a non-indigent litigant.

1 IT THEREFORE IS ORDERED, pursuant to 28 U.S.C. § 1915(a)(3), that the Court  
2 certifies to the Court of Appeals that the appeal is not taken in good faith.

3 IT FURTHER IS ORDERED, so that the certification herein shall be clearly marked on  
4 the docket for review by the Court of Appeals, that the Clerk of this Court shall docket this  
5 order on the docket sheet as an order that certifies to the Court of Appeals that the appeal  
6 is not taken in good faith and shall forward same to the Ninth Circuit in a manner consistent  
7 with the Clerk's current practice.

8 DATED: June 30, 2011.

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12 EDWARD C. REED  
13 United States District Judge  
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